1952. **File No.** O. Charities 52

p. 29 E

Legal Department

A. BRANCH

Subject:—

Opinions regarding Charities

File No. O. Charities 52

Gen. 194

204-A

C O N T E N T S

Legal Department Vol.No.O. Charities/1952.

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21. R.I.No.23515/9-10-52. O.No.20483/6-12-52. — Question whether the amount of Rs.2000/- donated for running Std. X permanently can be returned to the Mandal and (2) Whether for returning the surplus that would remain in June 1953 from the donated amount of Rs.15001/- no order of the court is necessary (Pl. also see R.L.A's No.2445/14-2-52). 47-48

Legal Department.

The question raised for consideration is whether there is any legalobjection to Government liquidating the amount of the T.B.Association Fund taken over by the Baroda Government in 1949 and merging the same with the general balances of the State. It appears from the Baroda State Order dated 31st January 1949 at pp.19-20 ante that at the request of the T.B.Association ofBaroda the State took over the management and control of the T.B.Sanatorium and the T.B. Clinic. The object of the Association in passing with the control of these two institutions was that the Baroda Government would also assume responsibility for furnishing the funds required for their maintenance. As a natural corollery to this assumption of responsibility the then existing fund of Rs.12,66,800/- was also taken over by the State Government. There is, however, nothing in the correspondance to suggest that this fund was required to be maintained as a seperate fund. From para 2 of the Baroda Government Resolution, it is clear that the only undertaking given by the Baroda State was to earmark a sum of rupees three lacs for capital expenditure and to pay a sum of Rs.7000/- to the T.B.Association forenabling the Association to carry on propoganda against T.B. As a matter of fact, Government is spending on the maintenance of the two institutions and on the B.C.G.programme more than the amount of the interest accruing on the amount of the fund. In these circumstances it is clear that Government is abiding by the responsibilities imposed upon it and there would be no legal hindrance in the way of the L.S.G.& P.H.D. proposal to liquidate the amount of the fund.

Sd/- J.A.D. 12/1
Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No.388

dated the 12th January 1952.

KAN/8-6.

Office of the R.L.A.

A charity establishment supported by voluntary contributons stands in the same position as any other charity so long as there is a fund or property impressed with a charitable trust. If there is, it is immaterial whether the source of it is a subscription of a number of people or the donation of one. Consequently, the persons managing the Nursing Association Fund may be deemed to have assumed the position of trustees who are bound to carry out the aims and objects of the Association as laid down in its rules or by-laws. It is possible that some Associations may have been registered under the Societies Registration Act, 1860, and their constitution and the objects may have been specified by the Memorandum of Association, while the constitution and objects of other Associations not so registered may have been laid down in the rules and by-laws of such Association. Some Associations may have framed schemes under the provisions of the Charitable Endowments Act, 1890, for the administration of their funds. The question whether Government can claim the funds of a Nursing Association will, therefore, require to be scrutinised in light of its constitution, aims and objects as laid down in the Memorandum of Association. Fund will have to be considered on its merits as suggested by the L.S.G. & P.H.D. and not as a general question as suggested by the F.D. Even G.R.(H. & L.G.Department) No.2653/33 dated 17-4-1947 does appear to contemplate that the case of each Association should be seperately considered on its own merits with regard to the transfer of its fund to Government.

& or the rules or by-laws framed by it for carrying out the objects of the Association. The case of each Nursing Association

Id/- P.H.L. 23/1

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No.1090,

dated the 23rd January 1952.

KAM/8-6.
b e.

Office of the R.L.A.

The questions for R.L.A's consideration are -

(1) Whether the acceptance of the donations by the Baroda Government would in any way affect the transfer of the school to any private society; and

(2) whether it would be legally feasible to place the balance of the Jat Anamat at the disposal of the Society which takes over the management of the school.

For the decision of the first question the terms of the donation accepted by Huzur Order No.112/67 dated 7th January 1947 have to be considered. As stated in the said order the donation of Rs.20,001/- was accepted by the Baroda Government subject to the express condition that Government would take up the sixth standard class under its control and would maintain it at Government expense. After the merger of the Baroda State the Bombay Government would be bound by this condition. Therefore, Government would not be competent to transfer the school to any private society without the sanction of the Court.

As regards the second question, it appears that the fund kept as Jat Anamat was held by the Baroda Government in trust for the purpose of meeting the expenses incurred or running the seventh standard class of the school. After the merger it has vested in the Government of Bombay as a trust fund for the above purposes. There would be no objection to place such fund at the disposal of any society which is willing to carry out the object with which the fund was created. But for such diversion of the fund the sanction of the Court will have to be obtained.

Id/- R.M.L. 13/2

Remembrancer of Legal Affairs.

KAN/8-6.
4 c.

U.R. to E.D., No.2445, dated the 14th February 1952.

Office of the R.L.A.

The R.L.A. is requested to advise whether the acceptance of the two donations by the Baroda Government would in any way come in the way of the proposed transfer of management of the High School to the Kathore Kelawani Mandal.

2. Out of the terms and conditions attached to the first donation of Rs.40,000/- the only conditions deserving notice are that the school shall be converted into a High School and named as the Vamalchand Devchand Galliare High School. The school having already been converted into a High School, the only condition that should now be attached to the transfer of the management is that it shall continue to bear the name of Vamalchand Devchand Galliare High School. The proposal of the Education Department to adda a condition to this effect. (vide the draft G.R. at p.26 of C.S.) is in order. It appears however from para 6 of the Tippan at p.23-C that the Baroda Government intended to invest the donation in bonds. The Education Department may ascertain this. If the amount has been invested in bonds it would be necessary for Government to pay to the Mandal the annual amount of theinterest.

3. As regards the second donation of Rs.20,000/- no conditions were attached to it by the donor.

4. There would therefore appear no objection to the proposed transfer of the management.

Id/- P.M.L. 17/3

Remembrancer of Legal Affairs.

U.R. to E.D. No.4099, dated the 17th March 1952.

10440 dated 27-5-1952.

Submitted with reference to E.D. note at pp. 7-3 ante. Attention is invited to paragraph 2 of the R.L.A.'s opinion No.4099, dated 17th March 1952, at page 3 ante, in the concluding portion of which it was suggested to the E.D. that that department might ascertain if the donation of Rs.40,000/- had been invested by the Baroda Government in Bonds as in that case it was necessary for Government to pay the annual amount of the interest to the Kathore Kelwani Mandal. In this connection the Director of Education reports (vide his letter at page 35 of the Correspondence section) that the amount of Rs.40,000/- donated by the public was not actually invested in Government bonds but it was credited to Government by the Baroda State; and that the question of paying interest to the Mandal does not arise. The Director's letter is shown to the R.L.A. for information with reference to paragraph 2 of the previous opinion.

2. The papers may be seen and returned to E.D.

D.S.(Opinion)

Since the amount was not actually invested by the Baroda Govt. no question of payment of interest to the mandal would arise.

Id/- E.P.B. 29/5

R.L.A. Id/- P.M.L. 29/5 A to A

U.R. to E.D. No.9137 dt.31-5-52.

KAM/6-6.
4 e.

V.D.G.High School, Kathore -

Transfer of the - to the Kathore Kelwani Mandal, Kathore.

GOVERNMENT OF BOMBAY.
Education Department,
Resolution No.SSN 2852,
Bombay Castle, 10th June 1952.

Letter from the Director of Education, No.259/2-C dated 15th February 1952.

Remembrancer of Legal Affairs' Memorandum No.4099 dated 17th March 1952.

Government Letter, Education Department, No.SSN 2852/E/12680 dated 24th March 1952.

Letters from the Director of Education No.259/2-c, dated 18th April 1952, 7th May 1952, 10th May 1952 and 21st May 1952.

Remembrancer of Legal Affairs' memorandum No.9137 dated 31st May 1952.

Resolution:- Government is pleased to direct that the V.D.G.High School, Kathore, should be transferred to the Kathore Kelwani, Mandal, Kathore, subject to the following conditions:-

a) The management should pay a nominal rent of Rs.10/- per year for the use of the building and the ground of this school. The building is to be used only for academic purposes and no public meetings of a political nature or for communal propaganda should be held there. The Management will have to carry out current repairs at its own expense and keep the building in good condition.

b) The furniture, library and other equipment should be carefully used.

c) The staff of the State School transferred to the new management should be given the scales of pay and allowance, with such adjustments as have been and would be specifically prescribed for them by Government.

d) The building will be open to inspection by officers of the Education and Public Works Department in order to ensure that they are maintained in good condition.

e) The management should set aside, as a Reserve Fund for the School, the amount of Rs.25,000/- already collected by it and raise it to Rs.35,000/- within a peridd of one year of the transfer of the school.

f) The school should continue to bear the name as "Vamalchand Devchand Galliara High School".

g) No structural additions or alterations to the building should be made without the permission of the Executive Engineer. When such additions or alterations are allowed the management will have no claim over them when it vacates the building.

h) In the event of a breach of any of the conditions the agreement will terminate and the building will be taken over by Government after giving a month's notice.

i)
ix/The transfer of the school and its assets will be for a period of 5 years in the first instance and the position will be reviewed thereafter.

2. As regards the transfer of the staffx etc. the staff which is willing to be transferred should be transferred to the Kathore Kelwani Mandal on the terms and conditions laid down in Government Resolution, Education Department, No.8864, dated 20th October 1949, read with Government Resolution, Education Department, No.SSN 2950, dated 27th July 1951. The staff which has been transferred to this school since merger from other schools, and who are not willing to go over to the private management should be x retransferred to their original posts. If any of the staff which was in the school proper before merger is not willing to be transferred it should either be absorbed in the Department proper if possible, or discharged. The staff which cannot be absorbed should be given compensation etc. in accordance with the rules prescribed in Government Resolution, Political and Services Department, No.2735/46 dated 30th May 1951.

3. The Director of Education should be authorised to enter into an agreement with the new management of the school and to effect the transfer with effect from the date of execution of the agreement or any other convenient date.

By order of the Governor of Bombay,

Sd/-

for ((B.B.Samant)
(Under Secretary to Government.

Sd/- 12/6

To

The Director of Education, Poona,
The Educational Inspector Baroda Division,
The Accountant General, Bombay (through the Finance Department)
The Deputy Accountant General, Baroda, (-do-)
The Chief Engineer to Government, Public Works Department,
The Superintending Engineer South Gujarat Circle, Baroda,
The Executive Engineer Baroda Division,
The Legal Department,
The Finance Department,
The Public Works Department.

KAN/8-6.
4 s.

No. 11491 dt/11-6-62.

Submitted with reference to L.S.G. & P.H.D. note at p. 97 ante. One Punamchand Hirachand Shah of Mandvi had on 25th Sept. 1947 offered to the Collector of Surat a donation of Rs. 7225/- for the formation of a charitable endowment fund for providing medical relief to maternity patients in the District Local Board dispensary at Mandavi. The donor had attached inter alia the following conditions to the donation :-

1) that the money should be invested in Govt. securities;
2) that the securities should be vested in the Treasurer of Charitable Endowments;
3) that the fund should be named the Shah Punamchand Hirachand Mandvi Medical Relief Endowment Fund:
4) that a Committee of four including the Collector of Surat (to act as Chairman) should be constituted for the administration of the fund.
5) that the Scheme for the utilisation of the fund shoul be settled by Govt. in consultation with the donor, --

The money was kept by the Collector in Revenue Deposits. On the next day the Collr. wrote to Government requesting sanction for the acceptance of the donation. In November 1947 the Collector reported that Govt. securities of the face value of Rs. 7000/- had been purchased through the Reserve Bank of India.

2. After consulting the Surgeon-General Government considered that the income derived from the securities would be toom meagre to maintain two beds as proposed by the donor. The Collector of Surat was therefore asked to ascertain from the donor whether he was agreeable to a modification viz. that the interest on the securities should be paid to the D.L.B. Surat and ear-marked for the provisions of comforts to the maternity patients at the Mandvi dispensary and also

for the purpose of expensive drugs, injections, etc. The donor was not agreeable to this. He however expressed his desire to offer an additional donation of Rs. 10,000/- subsequently raised to Rs. 25,000/- Ultimately Govt. decided not to undertake the responsibility of maintaining maternity beds at D.L.B. or Municipal Dispensaries. The Collector of Surat was, therefore, directed to advise Shri Shah to settle the matter with the Dist. Local Board, Surat, direct (vide G.L. dt/ 13-4-1949 at p. 67 of File 5901/33). Shri Shah then applied to the Collector of Surat for return of the money (p. 5 ante). In their letter dt/7th August 1951 the L.S.G. & P.H.D. instructed the Collector to transfer the securities in the name of Shri Shah provided he was agreeable along with the amount of interest and the balance of Rs. 274/14/- credited to the revenue deposit. If Shri Shah was not agreeable to accept the securities the Collector was directed to sell the securities and pay the cash to him. Shri Shah has now given a notice of suit under sec. 80 C.P.C. praying for return of the sum of Rs.7375/- with interest at 6% etc.

3. In the meanwhile two sons of Shri Shah protested to the Collector of Surat against the return of the money. A question was then raised whether the donor can at all claim the return of the amount. The D.G.P., Surat who was consulted in the matter has expressed the view (p. 53 ante) that the amount having been given in charity Shri Shah cannot now lay any claim to it. The Charity Commissioner has also endorsed this view of the D.G.P. (p.57 ante). The R.L.A. is now requested to advise whether the view expressed by the D.G.P. Surat is correct.

4. It is true that along with Shri Shah's application dt/ 25-9-47 proposing to offer the donation the Collector also received the amount of the donation. But the Collector had asked for sanction of Government to accept the amount. This sanction was not communicated. On the contrary the donor was

requested to settle the matter directly with the D.L.B. Surat. Moreover the proposal of the donor was subject to several conditions mentioned by him in his letter dt/ 25-9-1947. One of them being that the securities shall be vested in the Treasurer of Charitable Endowments and the scheme shall be settled by Government in consultation with the donor. Neither of these things have been done. Not proposals in regard to the vesting order and the settlement of the scheme had been received from the Collector and no trust-deed had been executed. In the circumstances no perfect trust can be said to have been created. " A trust is not perfectly created when there is a mere intention of creating a trust or a voluntary agreement to do so, and the settler himself contemplates some further act for the purpose of giving it completion." (Vide Lewing on Trusts, 15th Edn. p. 51). The conditions attached to the offer made by Shri Shah by his letter dt/25-9-1947 not having been fulfilled it cannot be said that a trust has been created so that the question of withholding payment of the money to Shri Shah or of applying the same cy-pres would arise. The view expressed by the D.G.P., Surat in his letter at p.53 ante does not appear to be correct. In the circumstances it appears that the money will have to be returned to Shri Shah as already directed by Govt. in their letter dt/ 7-8-1951. (p.32 ante)

Id/- D.W.D. 17/6

D's (Opinion) I agree. Reply may be in terms of para 4 of Shri Deshmukh's note.

Id/- R.T.K. 18/6

Solicitor may please see also

Id/- P.M.L. 18/6

Solicitor

Id/- P.M.L. 18/6

I agree. B.P.T. Act will have no application unless a trust has been enacted.

Id/- R.D.N. 18/6

Reply A-A.

U.R.39 L.S.G. & P. H.D. No.10285 dt.20-6-52 File O.Charity/52.

11632 dt. 13-6-52.

Submitted with reference to the E.D. note at p. 1 ante. It appears that the Balasinor State had taken over the building of the Birpur Anglo-Vernacular School built from out of funds collected in charity to be maintained as a school by the State (view the Devan's order dated 2-12-1943 at p. 7 of the Correspondence section). The Director of Education states in his report at p. 1 of the Corres. section that the school building was donated to the State Govt. with a condition that the school shall be maintained as a State Institution. He has therefore raised the question whether the terms of the donation will come in the way of the transfer of the School to a private body. The E.D. considers that there would be no objection if this Govt. maintains the school through a private agency. The R.L.A. is requested to advise.

2. It would be seen from the order of the Devan of Balasinor State, dated 2-12-1943 that the State accepted the donation of the building subject to the express condition that the school shall be maintained as a State school. After the merger of the Balasinor State the Govt. of Bombay would be bound by this condition. It would not therefore be competent for Govt. to transfer the management of the school to a private institution without the sanction of the Court. The view expressed in the E.D. note at p. 1 ante does not appear to be correct.

Id/- B.W.B. 17/6

Dis & (Opinion) I agree. Reply may be at in para 2

Id/- R.T.K. 18/6

R.L.A. Id/- P.M.L. 18/6

U.R. to E.D. No.10200 dtd 19-6-1952

[redacted]/6.

Office of the R.L.A.

This is a case of a public trust for a charitable purpose viz. education (cf. sec.9(2) of the Bombay Public Trusts Act, 1950). Under sub-section (1) of section 56 of that Act if at any time the Charity Commissioner is of opinion that the original object for which the public trust was created has failed or it is not in public interest expedient, practicable, desirable, necessary or proper to carry out wholly or partially the original intention of the author of the trust the Charity Commissioner shall give notice in writing to the trustees to apply to the Court within the time prescribed for directions. The Education Department may therefore approach the Charity Commissioner in the first instance.

Sd/- P.M.L. 3/7

Remembrancer of Legal Affairs.

U.R. to E.D. No.11071, dated the 4th July 1952.

KAN/8-6.
4 c.

No. 8955.

Legal Department,

Bombay Castle, (Bombay No. 1), 29th May 1952.

All District Government Pleaders.

Subject: Appearance in the District Courts on behalf of the Charity Commissioner.

.....

Sir,

I have the honour to request you to appear on behalf of the Charity Commissioner, in all matters arising in the District Court and the Court of the Civil Judge, Senior Division in your District on the same terms as Government except that the Bills should be submitted to the Charity Commissioner directly.

Yours faithfully,

Sd/- x x x

Secretary to Government.

No.1551 x of 1952.
Office of the Charity Commissioner,
Bank of India Building, 4th floor,
Flora Fountain, Fort, Bombay No. 1.
Dated:- 2nd June-1952.

Copy forwarded with compliments for information to:-

1) The Deputy Charity Commissioner, Ahmedabad.
2) The Asstt. Charity Commissioner, Baroda.
3) The Asstt. Charity Commissioner, Poona.
4) The Asstt. Charity Commissioner, Kolhapur.
5) The Asstt. Charity Commissioner, Belgaum.
6) The Asstt. Charity Commissioner, Greater Bombay Region, Bombay.

KAN/8-6.
4 c.

No. 15770/E

Legal Department,
Bombay Castle (Bombay No.1), 24th September 1952.

To

Shri T.G.Mehta,
District Government Pleader,
Banaskantha.

Subject:- Appearance in the District Courts on behalf of the charity Commissioner.

Sir,

With reference to your letter No.300, dated 29-3-1952 I am directed to state that the District Government Pleaders will have to draft pleadings, applications, memoranda of appeals and do all other things which a lawyer does for his client, for which he will receive instructions from the Charity Commissioner or the Deputy Charity Commissioner or the Assistant Charity Commissioner concerned. I may further add that the litigation is not Government litigation and Legal Department will not be concerned either with the giving of instructions or payment of fees. The scale of fees will be in accordance with Rule 21 of the Law Officers (conditions of service) Rules, 1951.

Yours faithfully,

Id/- P.M.L.

Secretary to Government.

KAN/3-6.
4 c.

Legal Department,
R.I.No.20849 dt. 6.9.52.

Submitted with reference to thes office note of the S.D. at page 125 ante.

2. The villagers of Kopergaon had applied against the managing Committee of the Devasthans situated in Kopergaon Bet. The main contention of the villagers is that management of Devasthan should be taken in hand by Govt. as the present committee is not looking in the interest of the public. The applicants state that they have no faith in the Committee because they never show the accounts of the amount of cash allowances which they receive from the Kopergaon Sub-Treasury.

A Civil suit was going on in the Civil Court at Kopergaon on similar points. The Committee contended that the fund was not a public charitable trust. The learned Civil Judge held that the suit trust was not a private trust, but it was a public Charitable trust and the suit was dismissed. The plaintiffs, the panchas of the Devasthan Committee went in appeal, but the appeal was dismissed.

It is obligatory on the trustees under the rules to get the accounts audited annually. The Collector of Ahmednagar reports that the Committee has been getting the accounts audited by a Chartered Accountant. The management of the temples is satisfactory. As such no complaint can be made regarding the accounts.

As regards the other complaints he says that it is open for the applicants to bring in a suit for the removal of the trustees under sect. 50 of the Public Trust Act, 1950.

It appears that the Govt. may not interfere in the matter. The complainants may be asked to file a a suit for the removal of the present Panchas of the Devasthan, after obtaining the consent of the C.C. under sec. 50 of the B.P.T Act, 1950.

Id/- V.D.V. 24/9

Id/- R.D.N. 24/9

R.L.A. Id/- P.M.L. 24/9

[redacted]/9-6.

S.R.No.15923 dt.27.9.52.

No.19429/E
Legal Department,
Bombay Castle,
(Bombay No.1, 21st November 1952.

To

Shri F.G.Mehata,
District Government Pleader,
Banas Kantha, Palanpur

Subject:- Appearance in the District Courts on behalf of the Charity Commissioner.

Sir,

With refrence to your letter No.371/52, dated the 31st October 1952, I have the honour to request you to forward a copy of your letter No.341, dated the 27th September 1952 immediately to this office.

Yours faithfully,

Sd/- M.D.Nigudkar

for Secretary to Government.

No. 402 of 1952

Sir,

I have the honour to respectfully submit a copy of this office No.341 dt. 27-9-52 as directed.

However it may please be noted that after a personal discussion with the Charity Commissioner at Palanpur on 6-11-52, I have undertaken to do all work on behalf the Charity Commissioner, in the Banas Kantha ~~xx~~ District.

Sd/- F.G. [illegible]

Dt. Govt. Pleader

Palanpur -

25-11-1952

KAN/8-6.
4 c.

No.341 of 1952

From,

Fatehchand G. Mehta,

Dt. Govt. Pleader;B.K. Dt.;

Palanpur.

To,

The Remembrancer of Legal Affairs,

State of Bombay;

Bombay.1-

Ref: No. 15770/E dt.24-9-52.

Sir,

I have the honour to submit further in the above matter that, in one matter, wherein a suit is to be filed in the Dt.Court on behalf of the Charity Commissioner, he writes "If however the Govt. Pleader is not willing to accept work from the Charity Commissioner two or three names of advocates in that District may be suggested so that the work can be entrusted to one of them". and I have been asked whether I am willing to accept the work on behalf of the Charity Commissioner or not? From No.15770/E dt.24-9-52(referred to above), it is understood that it is left at the discretion of the Govt. Pleader, whether he should accept briefs from Charity Commissioner or not.

If the Legal Department is of opinion, that I may be failing in my duty as Govt. Pleader, if I were to refuse accepting the brief or even if the idea be resented by the Legal Department, I have no hesitation to accept the case from the Charity Commissioner; otherwise I may respectfully refuse to accept the same: A reply is solicited.

Sd/-F.G.Mehta

Dt. Govt. Pleader.
B.K.Dist.

Palanpur

Dt. 27-9-1952.

Submitted with reference to H.D. office note at p. 3 ante.

2. These papers deal with the question of recovery of an interest free loan of Rs.20,000/- for purchase of 9 motor trucks granted to the Ex-Servicemen's Co-operative Transport Society, Dhulia, W.K. on the 14th August 1947 out of the Soldiers' Post War Reconstruction Fund which is managed by a Committee of Administration of which the Collector is an ex-officio President. Although the loan was granted in 1947 the agreement in respect of that loan was executed only on the 19th December 1949. It supports to be executed between the Collector of W.K. on behalf of the Committee of Administration of the Post War Services (Bombay) Reconstruction fudn, on the one part and the Ex-Servicemen's Transport Association, Ltd., W.K. on the other. The grantee failed to reply the amount on due dates specified in the agreement and even now an amount of Rs.19,000/- is still outstanding. It appears M/S. Dadgudgir & Co. and M/S. Chimanlal & Sons two creditors of the grantee obtained decrees in two Civil suits in the Court of the Civil Judge, S.D., Dhulia and in execution of these decrees attached various miscellaneous articles and three trucks belonging to Society. The attachment was sought to be resisted by Application No.711 of 1952 and 712 of 1952, but the Court dismissed the applications on the grounds that (1) the Collector who purported to make them had no authority to do so on behalf of the Committee of management in view of the provisions of section 141 of the Code of Civil Procedure and Order I Rule 8; and that (2) no specific charge was created on the two motor trucks in question as the grantee owned more

than nine trucks and it could not be said that the trucks were purchased out of the loan. The D.G.P. West Khandesh who was consulted as to the action to be taken to safeguard the interest of the fund has expressed the view that the Collector seems authorised to take legal steps and that two courses would be open in this behalf, one out of Court and the other through the Court viz., (1) to call upon the grantee under condition 6 of the agreement to deliver up all serviceable material purchased out of the loan or (2) to file a Civil Suit in respect of the entire amount due. The R.L.A. is requested to advise as to the course tobe followed.

3. The agreement dated the 19th December 1949 although it is styled as a "Draft Agreement" is a concluded agreement and evidences the grant of Rs.20,000/- as an interest free loan, the condition thereof, the modes of its recovery , etc. and is binding on the parties, that is to say theCommittee ofAdministration of the Post wWar Services (Bombay) Reconstruction Fund acting through the Collector who is its Ex-officio President and the Ex-Servicemen's Transport Association Ltd. a body registered under the Bombay Co-operative Societies Act, 1925, who is the grantee of the loan. The grantee has failed to repay the ~~sx~~ loan on the due dates and before the time specified in condition 1 of the agreement. In this behalf condition 6 provides that on the breach of such conditions the Collector of the district may call upon the grantee to deliver all serviceable materials including tools or equipment purchased from the loan and on the Grantee's failure to so deliver empowers the Collector or any officer authorised by him may seize and sell by auction or otherwise the materials and appropriate the proceeds thereof. It further empowers the Collector to recover "under the law for the time being in force" any instalment or instalment of money payable under the agreement. Condition 7(ii) and 8(iii) further provide as follows:

(i) We the aforesaid grantee in considered on

KAH/C-6.

4C.

of the grant of the aforesaid loan hereby offer as security

Office of the R.L.A.

Charitable Endowments Act, 1890.

Enforcement of a bond.

It appears that a vesting order and a scheme have been made under the Charitable Endowments Act, 1890, in respect of the administration of the Post War Services (Bom.) Reconstruction Fund. Under clause 6 of the Scheme, power is given to the Committee to appoint such Officer or Officers as the Committee may consider it necessary for the purposes of the actual application of the Fund and its income towards the several charitable objects of the Fund in accordance with the directions which may be issued by the Committee from time to time. In exercise of that power it appears that the Collector of West Khandesh was appointed as an officer for the purpose. If so, the Collector was legally entitled to apply to the Civil Judge (Senior Division) for releasing the trucks from attachment and probably if this legal position had been brought to the notice of the Civil Judge, he would not have hold that the application filed by the Collector was untenable, he having no authority so to do.

2. It is, therefore, apparent that the Collector can institute a suit for enforcing the recovery of the loan from the grantees under the bond. It may, however, be noted that the bond which has been termed as the 'draft agreement' has not been executed by the Collector. Consequently, it may not be possible to enforce the bond although a suit would be maintenable for the recovery of the loan independent of that bond. The Collector has reported that the grantees have no assests. If so, no useful purpose will be served by filing any suit for the recovery of the loan.

Id/- P.M.L. 3/12

Remembrancer of Legal Affairs.

U.R. to H.D. No. 20325/A, dated the 4th December 1962.

R.I. No.29622 dt. 8-12-52

Submitted with reference to E.D. Office note at pages 2-4 ante.

2. The question for R.L.A's consideration is whether there would be any legal objection to the proposed transfer of the T.J. High School, Mehsana either to the Mehsana Municipality or to any other private body for management and that in case of such transfer whether the amount of donation of Rs.32000, would also have to be transferred to the body that would run the School. From the Baroda Govt. Tipan No.391 dated the 17th January 1919 it appears that in 1919 the donation of Rs.32,000 was accepted by the Baroda Govt. from Hiralal Vithaladas of Mehsana on condition that the then A.V. School at Mehsana would be converted into a full fledged High School and also that the said school would be named after a name proposed by the donor. It is clear from the papers underlying the acceptance of the donation that the Baroda Govt. in consideration of the donation of Rs.32,000 assumed the responsibility of converting the then A.V. School into a full fledged High School and naming the High School as per wish of the donor. Accordingly the Baroda Govt. established a full fledged High School with effect from 1-9-1920 and named it as the "T.J. High School, Mehsana" and it has been since then maintained as such. After the merger of the Baroda State, this Govt. has been maintaing the School and it has now been proposed to transfer it to a private body for management. It is the policy of Govt. to transfer such schools to private bodies for management, it would be competent for Govt. to transfer this school to either the Municipality of Mehsana or such other body as Govt. considers fit to manage the school. Such transfer

will not involve any breach of the conditions subject to which the donation offered by Seth Hiralal was accepted by the Baroda Govt. and which after the merger of the Baroda State would be binding on this Government. No question of handing over the amount of the donation to any body for running the school, arises. The view taken in para 4 of the E.D. Office note is correct. (cf. R.L.A. 's opinion No.19943, dated the 13th December 1951).

Sd/- 15/12

D. S. (Civil) Reply may be:-

The conditions subject to which the donation was accepted by the Baroda Govt. having been fulfilled, the question of returning the donation would not arise and there would be no legal objection to Govt. transferring the School to any authority on condition that it should be maintained as a fullfledged High School.

Id/- R.T.K. 16/12

R.L.A. Id/- P.M.L. 16/12

U.R. to E.D. No.21243 dt. 17-12-1952.

KAM/9-6.
4 e.

D.S. (Civil) The conditions of all donations except that of Rs.6000 have been satisfied and none of them can be returned to the donor. The donation of Rs.6000 was accepted by the Baroda Govt. from Sheth Bhikalal on condition of maintaing Std. VIII permanently. If the Atteraumba Kelvani Mandal agrees to run Std. VIII permanently, there would be no objection to Govt. transferring the donation of Rs.6000 to the Mandal with the sanction of the Court.

Id/- R.T.K. 22/12

R.L.A. Id/- P.M.L. 22/12

U.R. to E.D. No.21810 dt. 24-12-[illegible].

KAM/9-6.
4 c.

R.I.No. 30361
16-12-52

There would be no objection to the refund of Rs. 56-3-0 representing the collections offered in the "kund" as proposed provided the sanction of Legislature under Article 203(2) of the Constitution is first obtained. Govt. may in future allow the trustees or manager of the temple to manage the "kund" as part of the temple property.

D.S. (Civil) As in para 3

Ig/- R.T.K. 2/1

R.L.A. Ig/- P.M.L. 2/1

U.M. to R.D. No. 283 dt. 6-1-53.

KAM/9-6.
4 6.

D.S. (Civil)

So far as the donation of Rs. 20,000/- is concerned it was accepted by the Baroda Government on the express condition of maintaining Std.X. If the Savli School is now to be transferred to the Savli Taluka Kelawani Mandal together with this amount of donation action under section 47 of the Bombay Public Trusts Act, 1950, would be necessary and the Charity Commissioner may be requested to apply to the Court for discharging Government from the trust and appointing the Savli Taluka Kelawani Mandal as trustee for the purpose.

So far as the "Jat Anamat" of Rs.15,000/- is concerned, it appears that Government agreed to maintain Std. XI for a period of five years and to meet the expenses thereof out of this amount, but after the expiry of the period of five years the balance of the Jat Anamat of Rs.15,000/- if any will still be impressed with trust and similar action as proposed above will be necessary if the balance is to be handed over to the Savli Taluka Kelawani Mandal.

Id/- R.T.K. 4/12

R.L.A. Id/- P.M.L. 5/12

A to A.

U.R. to E.D. No.20483 dtd 6-12-52.

[redacted]